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E-FILED 11/22/17

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

THE INSURANCE COMPANY OF  
THE STATE OF PENNSYLVANIA, a  
Pennsylvania insurance company,

Plaintiff,

v.

COUNTY OF SAN BERNARDINO, a  
California public entity,

Defendant.

COUNTY OF SAN BERNARDINO, a  
California public entity,

Counterclaimant,

v.

THE INSURANCE COMPANY OF  
THE STATE OF PENNSYLVANIA, a  
Pennsylvania insurance company,

Counterdefendant.

Case No. EDCV16-00128 PSG (SSx)

~~[PROPOSED]~~ FINAL JUDGMENT  
AND STAY ORDER

Judge: Hon. Philip S. Gutierrez  
Courtroom: 6A

1 **FINAL JUDGMENT AND STAY ORDER**

2 Plaintiff and Counterdefendant The Insurance Company of the State of  
3 Pennsylvania (“ICSOP”) and Defendant and Counterclaimant The County of San  
4 Bernardino (the “County”) (collectively, the “Parties”) have informed this Court that  
5 they have finalized an agreement which sets forth a framework for settling the  
6 claims at issue in this action, subject to the occurrence of certain contingencies set  
7 forth therein (the “Contingent Settlement Agreement”).

8 The Court, having considered these matters, including the Contingent  
9 Settlement Agreement and all the papers filed in connection therewith, and good  
10 cause appearing therefore,

11 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

12 1. In accordance with the Court’s March 8, 2017 Order Denying the  
13 County’s Motion for Partial Summary Judgment and Interpreting the Insurance  
14 Policies in Favor of the Insurer (the “Anti-Stacking Ruling”), Dkt. No. 45, final  
15 judgment is entered in ICSOP’s favor on its First Cause of Action in its First  
16 Amended Complaint and against the County to the extent of any related claims in its  
17 Corrected Counterclaim. The Court hereby declares and interprets that the “Prior  
18 Insurance Non-Cumulation of Liability” clause (“Condition C”) contained in the  
19 ICSOP Policies (as defined in ICSOP’s First Amended Complaint) is an “anti-  
20 stacking” provision that prevents the County from “stacking” the policy limits of  
21 each ICSOP Policy;

22 2. This Final Judgment is entered pursuant to Rule 54(b) of the Federal  
23 Rules of Civil Procedure;

24 3. The Court expressly finds that this Final Judgment constitutes a full  
25 and final disposition of a discrete claim in this multiple-claims action;

26 4. The Court expressly finds and determines that there is no just reason  
27 for delay in the entry of this Final Judgment;

28 5. The Court finds that the correct interpretation of Condition C is not

1 only at issue in this litigation, but also that the Parties have admitted that it presently  
2 and materially affects other pending insurance claims between them with respect to  
3 potential coverage for millions of dollars of loss that the County alleges it incurred  
4 in connection with its liability for purported environmental damages involving  
5 additional properties (the “Additional Stacking Disputes”);

6         6.       The Court finds that the remaining claims in this action, which deal  
7 with the number of covered occurrences at issue (if any) and the amount of covered  
8 loss (if any), are separate from the stacking issue addressed in the Anti-Stacking  
9 Ruling, and present questions of fact that are discrete from the legal issue of  
10 stacking;

11         7.       The Court acknowledges that the Parties intend to and will appeal the  
12 Court’s Anti-Stacking Ruling, which appeal will determine the payment, if any, of  
13 the Disputed Loss (as that term is defined by the Contingent Settlement Agreement)  
14 and the impact of the Anti-Stacking Ruling, if any, upon this action and the  
15 Additional Stacking Disputes;

16         8.       The Court finds that the Parties have agreed in the Contingent  
17 Settlement Agreement that if there is no appellate review of the Anti-Stacking  
18 Ruling which results in a ruling on the legal merits regarding the interpretation of  
19 Condition C, the Contingent Settlement Agreement will be void. Under those  
20 circumstances, the Parties will then seek to try the remaining claims in this action  
21 and appeal the Anti-Stacking Ruling on its merits at the conclusion of trial. On the  
22 other hand, the Parties have also agreed that if such appellate ruling is issued on the  
23 legal merits regarding the interpretation of Condition C and such ruling becomes  
24 final, such finality will result in the Contingent Settlement Agreement becoming  
25 final and will also result in the Parties filing a stipulated dismissal of the remaining  
26 claims in this action with prejudice;

27         9.       The Court further finds that an immediate appellate interpretation of  
28 Condition C will preclude courts from having to review the issue under California

1 law a second time, including in any litigation resulting from the Additional Stacking  
2 Disputes. Given the potential for continued and future litigation concerning this  
3 issue, an immediate interlocutory appeal will conserve significant judicial resources;

4 10. During the pendency of such appeal, the remainder of this action shall  
5 be stayed in all respects and all currently-scheduled dates shall be taken off  
6 calendar, until such time as the Parties shall jointly move to lift the stay or shall file  
7 a stipulated dismissal with prejudice of the remaining claims in this action;

8 11. No award of attorneys' fees or costs, or of expert fees or costs is made  
9 in favor of either the County or ICSOP in this matter; and

10 12. Without in any way affecting the finality of this Final Judgment and  
11 Stay Order, this Court hereby retains exclusive continuing jurisdiction over the  
12 Parties for the purposes of interpreting or enforcing this Final Judgment and Stay  
13 Order and the Contingent Settlement Agreement.

14 IT IS SO ORDERED

15  
16 Dated: 11/22/17



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18 HON. PHILIP S. GUTIERREZ  
19 UNITED STATES DISTRICT COURT

20 Submitted by:  
21 Andra B. Greene (CA SBN 123931)  
22 Marc S. Maister (SBN 155980)  
23 Harry J. Schulz, III (SBN 205625)  
24 IRELL & MANELLA LLP  
25 840 Newport Center Drive, Suite 400  
26 Newport Beach, California 92660-6324  
27 Telephone: (949) 760-0991  
28 Attorneys for Defendant and  
Counterclaimant  
County of San Bernardino